

Attorney's Docket No. RA5373
2nd Amendment

Serial No. 09/738,852
3/17/2005

REMARKS

Applicant respectfully traverses the rejection of all claims and maintains them as above-listed.

Even though the examiner has withdrawn his rejection based on Nishiyama, it is not clear that we have clarified completely the limitation to application software programs in the claims. While the invention is directed to ensuring that different users across networks have access to the versions of software applications they are supposed to have so that they as end users can use them in their business (see summary section pages 2 and 3), it is not clear that the primary reference, Nishiyama, is doing this. Instead, it appears that Nishiyama, when it is tracking versions by site identification, appears to be doing so, in order to ensure that every programmer will get the most current version of the software being produced. However, the examiner skims over another limitation in claim 1 which is not in Nishiyama: "wherein more than one of said plurality of versions of a said software application is available to service requests from users on said server". The applicant's system is performing software use services on a server for users at various sites. Based on the siteID, the server determines which versions to activate for use on that server for a given user, based on that user's known siteID. Nishiyama instead is sending the software to work on the site's local computers. The last paragraph of Column 5 is fairly clear on this point, although the language of the Nishiyama patent is generally difficult to understand. Nishiyama's software management is clearly for *distributing software TO the various sites*. Thus this limitation of use of *services ON the server* is not seen in Nishiyama.

As the examiner has noted later, the reference to the computer system 401, Fig. 4 is not adequate to be a "network listening program". The examiner instead equates it, also, to a "web server", which he says is well known (2/14 office action, page 4 lines 9-11). While the charge by the examiner that the network listening program is both a computer system and a web server is vague, the applicant's network listening program is clearly identified as only a part of the server, for example, item 92 in Fig. 7.

In further citations to the Nishiyama reference, the examiner identifies a linking program. However in the citation in Nishiyama, the linking is to place the program at the

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local site, not to link the program to a request from a user at some site either local to or distant from the server and to then handle the request at that server. Accordingly the Nishiyama reference is not performing the same functions in the same ways with the same results as the applicant's claims, and it therefore does not make out an *a priori* case for containing most of the elements it is purported to contain. Accordingly, combining it with other references that merely attempt to add additional elements will not make the rejection sufficient to meet this traversal.

As all the rejections of all the claims depend on a misreading of Nishiyama, all the rejections of all the claims are traversed on this ground as well.

Further, the citation of the Wischinski reference as a secondary reference is traversed. Wischinski is cited under section 103(a), however, it has a publication date subsequent to the date of the applicant's filing. Accordingly, it should not be available to support the section 103(a) rejection as a secondary reference since section 103 requires that if the invention is not anticipated by the art, it must be obvious at the time the invention was made to a person having ordinary skill in the art. At the time the applicant's patent application was filed, Wischinski was not available as a reference to combine with the Nishiyama reference, so it would not have been available to one of ordinary skill in the art to so combine.

Believing the claims to be in condition for allowance, the applicant respectfully requests they be allowed and passed to issue.

Respectfully submitted,



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